

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE

|                           |   |                           |
|---------------------------|---|---------------------------|
| JIMMY DEAN LIVESAY,       | ) |                           |
|                           | ) |                           |
| Petitioner,               | ) |                           |
|                           | ) |                           |
| v.                        | ) | Nos.: 3:19-CV-390-TAV-DCP |
|                           | ) | 3:18-CR-036-TAV-DCP-15    |
| UNITED STATES OF AMERICA, | ) |                           |
|                           | ) |                           |
| Respondent.               | ) |                           |

**MEMORANDUM OPINION**

Petitioner Jimmy Dean Livesay has filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 [Doc. 1; Case No. 3:18-cr-36 (“Crim. Case”), Doc. 718].<sup>1</sup> In his motion, he presented numerous claims. This Court denied all of petitioner’s claims, with the exception of his claim regarding ineffective assistance of counsel in failing to file a direct appeal, which the Court referred to United States Magistrate Judge Debra C. Poplin for an evidentiary hearing [Doc. 19]. Now before the Court is Judge Poplin’s report and recommendation (“R&R”) [Doc. 30], recommending that the Court deny petitioner’s remaining claim. There have been no timely objections to the R&R, and enough time has passed since the filing of the R&R to treat any objections as having been waived. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72.

After a careful review of the matter, the Court is in complete agreement with Judge Poplin’s recommendations. Accordingly, the Court **ACCEPTS** and **ADOPTS** the R&R

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<sup>1</sup> All docket citations refer to the underlying civil case unless otherwise indicated.

in whole [Doc. 30]. Petitioner's § 2255 motion [Doc. 1; Crim. Case, Doc. 718] will be **DENIED**. The Court will **CERTIFY** that any appeal from the denial of this claim would not be taken in good faith and would be totally frivolous. Therefore, this Court will **DENY** petitioner leave to proceed *in forma pauperis* on appeal. See Fed. R. App. P. 24. Further, because petitioner has failed to make a substantial showing of the denial of a constitutional right as to this claim, a certificate of appealability **SHALL NOT ISSUE**. 28 U.S.C. § 2253; Fed. R. App. P. 22(b).

IT IS SO ORDERED.

s/ Thomas A. Varlan  
UNITED STATES DISTRICT JUDGE